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August 7, 2023

VIA ECF

Hon. Jesse M. Furman
United States District Judge
Southern District of New York
40 Foley Square
New York, N.Y. 10007

Re: United States v. Balouchzehi, No. 21 Cr. 658 (JMF)

Dear Judge Furman:

We write respectfully on behalf of Defendant Malek Balouchzehi to seek the Court's guidance on a disputed issue related to safety valve application in advance of sentencing.

We submit that Mr. Balouchzehi is eligible for a safety valve application under 18 U.S.C. § 3553(f). Mr. Balouchzehi satisfies the first four elements of § 3553(f), and Mr. Balouchzehi is willing to meet with the Government in satisfaction of the fifth element. We informed the Government of our position, but the Government does not view the Defendant as safety valve eligible because the Government believes the Defendant is an organizer or leader under the Guidelines.

The evidence at trial was insufficient to support an organizer or leadership role. If anything, the evidence showed that Mr. Balouchzehi played a minor role compared to Mohammad. The evidence showed that (1) Mr. Balouchzehi never possessed the drugs in question¹; (2) Mr. Balouchzehi acted at the instruction of Mohammad—who was the Undercover Officer's and

¹ May 11, 2023 Tr. 559:15-22, Khan Cross Examination (describing the courier transaction that did not go forward, where Mr. Balouchzehi was not present); May 12, 2023 Tr. 681:4-10, Musselwhite Direct Examination (describing the courier transaction with Mozambique undercover, where Mr. Balouchzehi was not present).

Confidential Source's first point of contact²; and (3) Mr. Balouchzehi took actions wholly inconsistent with that of an organizer or leader—e.g., traveling alone to Kenya to meet people he had never met before (whose full names he did not even know, while sending photos of his passport to them in advance).³

Sentencing is presently scheduled for September 12, 2023, at 3:15 pm. Defendant's sentencing submission is due two-weeks prior, on August 29, 2023. We respectfully request that the Court set a briefing schedule to determine whether Mr. Balouchzehi meets the organizer or leader criteria under the Guidelines. If the Court finds that Mr. Balouchzehi does not qualify for that enhancement, the parties can then arrange for the safety valve proffer in advance of sentencing.

Respectfully submitted,

/s/ Marc Greenwald

Marc Greenwald

cc: Elinor Tarlow, Esq. (by ECF)
Kaylan Lasky, Esq. (by ECF)

Defendant shall file a brief with respect to the organizer or leader enhancement no later than **August 18, 2023**; the Government shall respond by **August 25, 2023**. Sentencing is **ADJOURNED to October 18, 2023, at 3 p.m.** The Clerk of Court is directed to terminate ECF No. 102.

SO ORDERED.

August 8, 2023

² May 8, 2023 Tr. 27:1-6, Government Opening Arg. (“**Mohammad** introduced the defendant to two individuals, drug traffickers who . . . were actually that confidential source and undercover agent working for the DEA.”) (emphasis added).

³ May 11, 2023 Tr. 550:14-18, 551:5-20, Khan Cross Examination, (“Q. He came to the hotel where you were staying, the resort, right? A. Yes, he came to the resort, right. Q. And he was alone, right? A. He came alone, yes. . . . Q. And at that point, as of that time, when he came into the hotel lobby, he only knew you as Habibullah, correct? . . . A. Yes, he knew me as Habibullah. Q. He didn't have your passport number, did he? A. Not that I — no. Q. And Habibullah is actually not your name; that was your undercover name, right? A. That is correct. Q. He didn't have your date of birth, right? A. No, he did not. Q. But before he came to you, he sent you a screenshot of his entire passport, correct? A. The defendant did send me a screenshot of his passport, yes.”).